

in the Supreme Court of the Hawaiian Islands.

JUNE TERM, 1894.

J. I. DOWSETT VS. FLORENCE JONES AND PIERRE JONES, HER HUSBAND.

BEFORE JUDGE, C. J., BICKERTON, AND FREAR, JJ.

A married woman could, even prior to the Married Women's Act of 1888, make a valid contract, provided, her husband consented thereto, under Sections 1286 and 1287 of the Civil Code.

An action upon such contract, if brought after said Act, should be against the wife alone, although, if brought before the Act, it should have been against both husband and wife.

The creditor's claim against the husband for the debt of his wife under the Code, was not a vested right, and might be taken away by statute.

A new trial is ordered on the ground that the decision of the trial court against husband and wife is contrary to the evidence, which shows a cause of action against the wife alone.

The plaintiff is given leave to amend by striking out the name of the husband, as defendant, in view of the circumstances of the case and especially of the fact that the statute of limitations has become a bar to a new action since the commencement of this action.

OPINION OF THE COURT BY FREAR, J.

This is an action of assumpsit against husband and wife for \$200 and interest. The Circuit Court, First Circuit, jury waived (on defendants' appeal from the District Court) found as follows: "That Florence Jones with the consent of her husband borrowed \$200 from the plaintiff as a loan to be returned, and that no payment had been made to the plaintiff, and the same is due to plaintiff with interest. * * * The money being borrowed by and loaned to the wife with consent of her husband, and not repaid, she is liable. I award judgment to the plaintiff." To this decision the defendants excepted on the ground that "said action cannot be maintained against said defendants jointly and that no judgment for plaintiff can legally be entered herein and that no cause of action was shown herein."

Of the many views of the facts of this case suggested by counsel only one need be considered. This is the only one supported by the evidence and is that taken by the Circuit Court, namely that of an original promise made by the wife alone with the consent of her husband during coverture before the passage of the Married Women's Act of 1888, the action having been brought since the passage of that Act.

The questions raised by the first ground of exception are: (1) Was such promise valid, and (2) if so, who should be parties defendant in an action upon it?

At common law the promise would have been void, because made during coverture. Our statutes, prior to 1888, provided among other things as follows: "The husband * * * shall be accountable in his own property, for all the debts contracted by his wife anterior to and during marriage." Civ. Code, Sec. 1286. "She shall not, without his consent, unless otherwise stipulated by anterior contract, have legal power to make contracts, or to alienate or dispose of property, except as hereinafter provided. She shall not be civilly responsible in any court of justice, without joining her husband in the suit." Id. Sec. 1287. It is clear that the legislature, in curtailing the rights which the wife enjoyed by ancient Hawaiian custom, although following the common law pretty closely, meant to leave to her at least the power to contract with her husband's consent, and the liability to be sued with her husband upon such contract. Contracts thus made with his consent by her during marriage as well as contracts made by her before marriage, were placed by the statute on much the same footing as the latter class of contracts at common law, that is, the contract was valid but in a suit upon it during coverture both husband and wife had to be joined.

As to parties defendant, there can be no question that the wife should be a party under the Act of 1888, as before, for that Act greatly enlarges her liability; and we are further of the opinion that her husband should not be joined with her. The reason given in *Kalanahine v. Dole*, 3 Haw. 374 and by some courts elsewhere for the liability of the husband for his wife's ante nuptial debts (and by analogy under our statute, for her post nuptial debts which are placed in the same category) is that it is for the advantage of the creditors, since the husband upon his marriage takes the property of his wife, to which the creditors would otherwise look. This reason, if the true one, no longer exists, for by the Act of 1888 the property of the wife is now "free from the management, control, debts and obligations of her husband" (Sec. 1) and she is entitled to her earnings (Sec. 3). Another, and perhaps the more correct, historically speaking, though not a more reasonable, view is that the rule grew out of the mode of procedure and was made for the protection of the wife, rather than for the advantage of the creditors, the husband being a necessary party "for conformity." This reason also has ceased, for the Act now provides (Sec. 5) that a married woman may sue and be sued in the same manner as if she were sole. In either case the reason of the rule being taken

away the rule itself should fall. See 2 Bish. Mar. Women, Secs. 266, 268, 312, 313, 322, 323, and cases there cited, also *Story v. Downey*, 62 Vt. 243. The above provisions of the statute would on both reason and authority render the wife alone liable were it not for the former statute which made the husband "accountable in his own property for all the debts contracted by his wife." But this statute was repealed by the Act of 1888 (Sec. 12) and to make the matter doubly sure it was further provided (Sec. 8) that "a husband shall not * * * be liable to pay any judgment that may be recovered against his wife." It should perhaps be stated that the provisions above quoted from the Act of 1888 are subject to certain exceptions, which, however, are not applicable to this case. But it is argued that the accountability of the husband in this case a vested right in the creditor, since it originated prior to the Act of 1888, and that the legislature could not constitutionally divest it. It is true that a vested right could not be thus divested, and the Act itself (Sec. 13) expressly excepts from its operation "any rights of property which have already accrued under any law heretofore in existence." But the creditor's claim was not a vested right. The debt of the wife remained her debt and was not transferred by the statute to her husband. The statute merely made him accountable and this could be repealed at any time before judgment against him. The creditor's right of action against him upon his wife's debt is analogous to his right of action against her debtor upon her choses in action, which, it is well settled, is not a vested right. See 2 Bish. Mar. Women, Secs. 45, 52; also *Niles v. Hall*, 64 Vt. 453; *Baker's Executors v. Kilgore*, 145 U. S. 487; and *Anima v. Lau Kona*, 9 Haw. 1.

Counsel for the plaintiff argues that the case of *Fultz v. Fox*, 9 B. Moor. 493, cited in section 52 of 2 Bish. Mar. Women, requires the joinder of the husband, but that was because the statute merely removed his personal liability for his wife's debts, leaving him still liable to the extent of the property received by him from her, or rather leaving such property still liable, the judgment being rendered as to him to be levied only on such property. The court held that as to his liability out of his own property the statute had an immediate application, and the reasoning of the court in that case requires us to hold in the present case that the husband should not be joined under our statute which removes his liability entirely. See 2 Cord, Mar. Women, Sec. 1136, n. 1, and Secs. 1142-1145. The case of *Valentine v. Bell*, (Vt.) 29 Atl. Rep. —, also is referred to by counsel as holding that the husband was after the Married Women's Act still liable with his wife upon her antenuptial debt, the marriage having taken place before the passage of the Act. The decision contains no reasoning on this point, but, to judge from the reasoning of the same court in other cases, we infer that the statute upon which the decision was based must in so far as it bears upon this case differ from ours.

The last ground of exception is that "no cause of action was shown herein." The first count of the complaint (which alone need be considered) is upon a joint promise and indebtedness of the husband and wife in consideration of the money loaned to the wife with the consent of the husband. For the reasons above stated this count would have been bad at common law, but under our statutes, it shows a good cause of action against husband and wife. A good cause of action was also shown by the evidence, as we have seen, against the wife. The error of the plaintiff is that he sued both husband and wife, when he should have sued the wife alone.

That the wife alone was liable is a position not taken by either counsel in the lower courts or at the hearing before us, but counsel were afterwards requested by the court to argue it. Plaintiff's counsel considered both husband and wife liable, while defendant's counsel considered the husband alone, if any one, liable. The Circuit Court apparently regarded the wife as alone liable, but did not consider the question of the misjoinder of the husband.

The decision excepted to should be reversed and a new trial ordered, but as the suit cannot be maintained against both defendants upon the evidence if the same as at the first trial, we think that the plaintiff should be allowed to amend by striking out the name of the husband. Our statute of amendments (Civ. Code, Sec. 1145) is liberal in allowing "any petition or other pleading to be amended in any matter of mere form or by adding or striking out the name of any party," and unless such amendment is allowed the plaintiff may lose his rights, for no new action can be commenced because more than six years have now elapsed since the cause accrued. The case is much like that of *Sherman v. Harrison*, 7 Haw. 664, where the court upon exceptions ordered a new trial with leave for the plaintiff, the wife, to substitute her husband or his personal representative in her place, such amendment being required by the facts of the case and the statute of limitations having become a bar since the commencement of the suit. That amendments should be more freely allowed in such cases, see also *Garcia v. Mendonca*, 7 Haw. 194, and cases there cited; also *Sanger v. Newton*, 134 Mass. 308.

We may add that the motion of plaintiff's counsel for a dismissal of the exceptions on the ground that

the defendants had filed no bond conditioned against the disposition of their property should be overruled, since this is not the case of a motion for a new trial under section 1156 of the Civil Code which requires such bond, but of exceptions under Section 75 of the Act to Reorganize the Judiciary Department, which does not require such bond.

A new trial is ordered, plaintiff to have thirty days in which to amend as above indicated, and to pay the costs of the exceptions and of the amendment, if made.

J. A. MAGOON for plaintiff; A. S. HARTWELL for defendants.

Honolulu, October 2, 1894.

WHAT THE REGISTRATION SHOWS.

Nativity of Those Who Are Entitled to Vote.

The Exact Number for Oahu is 1917 and of These 509 are Native Born.

Of the 1945 registration certificates issued twenty-eight have been cancelled, and a final count of the books yesterday showed that 1917 persons on Oahu are entitled to vote at the next election.

Some of these certificates which have been cancelled were issued to persons who, so the records show, had not complied with the provision of the constitution regarding the paying of taxes. Others were issued to persons from other islands who registered here in the belief that their names would be transferred.

Dr. Rodgers says a dozen or more additional names would have been added to the list had it not been for the careless statement in an afternoon paper Saturday, which announced that the books would remain open until 8 o'clock. It appears the editor believed they should be kept open that late and so stated as a fact that they would be.

The doctor has gone over the list of 1917 names and he finds that 504 persons who registered are of Hawaiian birth, 54 are naturalized Hawaiians, 1331 received certificates of service, and 28 received special letters of denization. The following table shows the nativity of all those registered, and also the number who can vote for Senators and representatives, and those who can vote for Representatives only:

Place of Birth.	Sen. and Rep. only.	Total.
Hawaii nat.	283	226
United States.	385	71
England and Colonies.	224	50
Germany.	140	35
Portugal and Islands.	93	269
Other nations.	98	33
	1233	684
		1917

There is no medicine so often needed in every home and so admirably adapted to the purposes for which it is intended, as Chamberlain's Pain Balm. Hardly a week passes but some member of the family has need of it. A toothache or headache may be cured by it. A touch of rheumatism or neuralgia quieted. The severe pain of a burn or scald promptly relieved and the sore healed in much less time than when medicine has to be sent for. A sprain may be promptly treated before inflammation sets in, which insures a cure in about one-third of the time otherwise required. Cuts and bruises should receive immediate treatment before the parts become swollen, which can only be done when Pain Balm is kept on hand. A sore throat may be cured before it becomes serious. A troublesome corn may be removed by applying it twice a day for a week or two. A lame back may be cured and several days of valuable time saved or a pain in the side or chest relieved without paying a doctor bill. Procure a 50 cent bottle at once and you will never regret it. For sale by all Dealers, BRONSON, SMITH & Co., Agents for H. I.

A Sensation at the Hotel.

There was excitement at the Hawaiian hotel the other evening. Consul-General Mills lost his ennui in the soup; Judge Bickerton dropped his toast; Dr. Woods tipped over a chair; Mr. Whittely nervously undid his necktie; Captain Hoodlette hurriedly left the table; George Macfarlane put his napkin in his pocket by mistake. These were only half of the errors made and all because Steward Freeman had mackerel instead of mullet on the bill of fare.

CHAS. BREWER & CO.'S

Boston Line of Packets.

Shippers will please take notice that the AMERICAN BARK EDWARD MAY

Leaves New York on or about DEC. 15 for this port, if sufficient inducement offers.

For further information, apply to Chas. Brewer & Co., 27 Kilby St., Boston, Mass., or to C. BREWER & CO. (LTD.), Honolulu, Agents.

MR. FLEMING WILL NOT TALK.

He Looks Very Pleasant, but Gently Changes the Subject.

IT IS ALL A STATE SECRET.

The Project of Obtaining a Landing Place for the Pacific Cable is Still Being Discussed with the Government—The Matter Soon to be Decided.

Sanford Fleming, the man who is in Honolulu for the purpose of negotiating the privilege of bringing a cable here, is not a man who discloses his business to everyone who asks him about it. He is a most pleasant man to talk to, and gives one the impression that, if he could, he would tell the whole story gladly, but that he could not do so without violating a confidence. "I would like to tell you all about it," says he, "but, really the matter is, at present, in embryo, and I could not do it. I am communicating now with the Government, and it would not do for me to tell all I know. When the matter is completed I will tell you everything freely, but at present—"

There is very little doubt, however, that Mr. Fleming's mission here is an important one. A few days after his arrival he was called on by Captain May, of the *Hyacinth*. This, in itself, is not of any special significance; but the fact that the captain wore his full uniform, and was closeted for some time with Mr. Fleming seems to have some import. Then again, British Commissioner Hawes and Mr. Fleming seem to have almost diplomatic relations with each other. Altogether, Mr. Fleming's visit here seems, at the present time, to be a most important one.

It is expected that the *Champion*, which left here a few weeks ago, will soon return, and bring some information regarding Neckar island. It is a current rumor, and one that seems to be substantial, that the British cruiser has gone to the barren little rock for the purpose of surveying its shores and ascertaining whether, in the event of its being impossible or impracticable to land a cable here, Neckar island could be made use of for the purpose. Of course, if the cable should be landed there, a branch line would be laid to Honolulu, and we would have communication with the outside world, in addition to that of steamers. It is a consummation devoutly to be wished for, and, from present indications, soon to be realized.

J. F. Hackfeld leaves for the Coast on the *Australia*.



Why? Because

The World's Fair Directors were satisfied that Ayer's Sarsaparilla is the Best of Blood-Purifiers

—AND THE—

FINEST TONIC IN THE WORLD.

To Quicken the Appetite, Relieve that Tired Feeling, and Build up the System, Take

Ayer's Sarsaparilla

PREPARED BY

Dr. J. C. AYER & CO., Lowell, Mass., U. S. A.

For Sale by HOLLISTER DRUG CO.

FOR SALE!

TO ARRIVE

Polled Angus Bulls

REGISTERED STOCK.

The finest ever brought to these Islands.

Enquire of

L. L. McCANDLESS

or Cecil Brown,

575-2-5 1534-1m

New Advertisements

Metropolitan Market

King Street.



Choicest Meats

—FROM—

Finest Herds.

G. J. WALLER, Prop.

FAMILIES AND SHIPPING

SUPPLIED ON SHORT NOTICE

—AND AT THE—

Lowest Market Prices.

All Meats delivered from this Market are thoroughly chilled immediately after killing by means of a Bell-Coleman Patent Dry Air Refrigerator. Meats so treated retain all its juicy properties, and is guaranteed to keep longer after delivery than freshly-killed meat.

BENSON SMITH & CO

JOBBER AND MANUFACTURER

PHARMACISTS

113 and 115 Fort Street.

Pure Drugs.

CHEMICALS.

Medicinal Preparations,

AND

PATENT MEDICINES

AT THE LOWEST PRICES.

113 and 115 Fort Street.

BEAVER SALOON

H. J. COLTE, Proprietor.

Bore to announce to his friends and the public in general

That he has opened the above Saloon where first-class Refreshments

will be served from 3 a. m. till 10 p. m., under the immediate supervision of a competent Chef de Cuisine.

—THE FINEST GRADES OF—

Tobaccoes,

Cigars, Pipes and

Smoker's Sundries

Chosen by a personal selection from first-class manufacturers, has been obtained, and will be added to from time to time.

—One of Brunswick & Balke's—

Celebrated Billiard Tables

connected with the establishment, where of the same can participate.

W. H. RICE,

STOCK RAISER and DEALER

BREEDER OF

Fine Horses and Cattle

From the Thoroughbred

Standard bred Stallion, Nutwood by Nutwood, Jr

Norman Stallion.....Captain Grawl

Native bred Stallion.....Boswell

ALSO A CHOICE LOT OF

Bulls, Cows and Calves

From the Celebrated Bulls

Sussex, Hereford, Ayrshire & Durham

A LOT OF

Fine Saddle and Carriage Horses

FOR SALE.

2 PURE BRED

HEREFORD BULLS FOR SALE

Tourists and Excursion Parties desiring Single, Double or Four-in-hand Teams of Saddle Horses can be accommodated at W. H. Rice's Livery Stables.

All communications to be addressed to 183-1-1 W. H. RICE, Lihue, Kauai.

THEO. H. DAVIES.

THEO. H. DAVIES & CO.,

COMMISSION MERCHANTS,

12 & 13 The Albany.

LIVERPOOL.

1861.

Insurance Notices.

NORTH BRITISH AND MERCANTILE Insurance Company.

TOTAL ASSETS AT 31st DECEMBER, 1893,

£11,054,897 7s. 6d.

1—Authorized Capital, £3,000,000

Subscribed .. 2,700,000

Paid-up Capital..... 987,500 0 0

2—Fire Fund Insurance..... £3,041,070 11 11

3—Life and Annuity Funds..... £5,034,084 15 7

£11,054,897 7s. 6d.

Revenue Fire Branch..... 1,385,462 2 6

Revenue Life and Annuity Branches..... 1,203,974 18 2

£21,789,437 0 6

The accumulated Funds of the Fire and Life Departments are free from liability in respect of each other.

ED. HOFFSCHLAGER & CO.,

Agents for the Hawaiian Islands.

TRANS - - - ATLANTIC

Fire Insurance Company,

—OF HAMBURG.—

Capital of the Co. and Reserve, Reichs-

marks..... 6,000,000

Capital their Re-Insurance Companies..... 101,600,000

Total..... Reichsmarks 107,600,000

NORTH GERMAN

Fire Insurance Company,

—OF HAMBURG.—

Capital of the Co. & Reserve Reichs-

marks..... 8,800,000

Capital their Re-Insurance Companies..... 35,000,000

Total..... Reichsmarks 43,800,000

The undersigned, General Agents of the above two companies for the Hawaiian Islands, are prepared to insure Buildings, Furniture, Merchandise and Produce, Machinery, &c., also Sugar and Rice Mills, and vessels in the harbor, against loss or damage by fire, on the most favorable terms.

H. HACKFELD & CO.

1382-1

The Liverpool and London and Globe

INSURANCE CO.

(ESTABLISHED 1861.)

Assets..... £ 4,000,000

Net Income..... 9,079,000

Claims Paid..... 112,549,000

Takes Risks against Loss or Damage by Fire on Buildings, Machinery, Sugar Mills, Dwellings and Furniture, on the most favorable terms.

Bishop & Co.

1382-4

INSURANCE

Theo. H. Davies & Co.,

AGENTS FOR

FIRE, LIFE and MARINE.

INSURANCE

Northern Assurance Co

Of London for FIRE & LIFE.

ESTABLISHED 1836.

ACCUMULATED FUNDS - - £3,975,000

BRITISH AND FOREIGN

Marine Insurance Co. Ltd

Of Liverpool for MARINE.</